COURT NO. 7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal appeal No. 233 of 2001
(Old Case No. 1117 of 1985)

1. Ser Singh, son of Mohan Singh.
2. Diwan Singh, son of Sri Ser Singh.
3. Bhupendra Singh, son of Ser Singh,
   All resident of village Chandrpur, Police Station Khateema, District Nainital

....Appellants

Versus

State of U.P. ...Opposite Party

Sri S. K. Mandal, learned counsel for the appellants.
Sri Harish Pujari, learned A.G.A. for the state and
Sri Promod Belwal, learned counsel for the complainant.

Dated: 06.09.2007

Hon'ble Dharam Veer, J.

This criminal appeal has been preferred under Section 374 (2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) against the judgment and order dated 20.04.1985 passed by II Additional Sessions Judge, Nainital in Sessions Trial No.76 of 1984, State Vs. Sher Singh and others, whereby the learned II Additional Sessions Judge has convicted appellant no.3 Bhupendra Singh under Section 307 of The Indian Penal Code, 1860 (hereinafter referred to as IPC) and appellant no. 1 Ser Singh and appellant no. 2 Diwan Singh have been convicted under Section 307/34 IPC and sentence awarded to each of the appellant for three years' rigorous imprisonment.

2. As per the report of Chief Judicial Magistrate, Udham Singh Nangar dated 10.11.2006 appellant no. 1 Ser Singh has died, hence the appeal against Ser Singh stands abated.

3. In brief, the prosecution case is that on 17.06.1983 at about 8:00 P.M. the complainant's brother Durga Singh was coming from his flour mill then in the way he was caught hold by Diwan Singh and Sher Singh and Bhupendra Singh caused injuries with knife on his back. This incident was witnessed by Chandra Singh, Man Singh and Jagat Singh. With the same averments the FIR was lodged by Hayat Singh on 18.06.1983 at 10.30 A.M. in Police Station Khatima that FIR is Ex.Ka-1. On the basis of that FIR the chick report was prepared i.e. Ex.Ka-7. The entry was made in the G.D., the carbon copy of G.D. is Ex.Ka-8. Injured Durga Singh was taken to the hospital by his brother and complainant Hayat Singh on 18.06.1983 at 9:00 A.M. The injured was medically examined by the Medical Officer and the medical report was prepared i.e. Ex.Ka-2. The investigation of the case was entrusted to S.I. Mangla Nand Khanduri, who prepared the site plan of the place of occurrence i.e. Ex.Ka-5. During the course of the investigation, the Investigation Officer recorded the statement of the witnesses and after concluding the investigation he submitted the charge-sheet i.e. Ex.Ka-6 against the appellants under Sections 307/324 IPC on 13.07.1983 in the Court of Chief Judicial Magistrate, Nainital.

4. The Chief Judicial Magistrate committed the case to the Court of Session Under Section 209 Cr.P.C.

on 18.05.1984 after compliance of the provisions under Section 207 Cr.P.C.

5. Learend Sessions Judge framed charges on 15.09.1984 against appellant no.3- Bhupendra Singh under Section 307 IPC and against appellant nos.1 & 2 Ser Singh and Diwan Singh under Section 307/34 IPC. The charges were read over and explained to the appellants who pleaded not guilty and claimed to be tried.

6. To prove its case the prosecution examined P.W.1 Hayat Singh complainant of the case, P.W.2 Dr. H.C. Joshi, who had medically examined the injured Durga Singh P.W.3 Durga Singh (the injured), P.W.4 Chandra Singh, who was the eye witness, P.W.5 Man Singh, who was also the eye witness, P.W.6 Dr. P.D. Singh, P.W.7 S.I. Mangla Nand Khanduri (Investigating Officer), P.W.8 Head Constable Jagat Singh. Thereafter, statements of the appellants were recorded under Section 313 Cr.P.C., who had denied the allegations made against them and stated that they have falsely been implicated in the case due to the enmity.

7. After appreciating the evidence and hearing learned counsel for both the parties, the learned Sessions Judge has convicted appellant no.3 Bhupendra Singh under Section 307 IPC and appellant no. 1 Ser Singh and appellant no. 2 Diwan Singh have been convicted under Section 307/34 IPC and sentence awarded to each of the appellant for three years' rigorous imprisonment.

8. I have heard Sri S.K. Mandal, learned counsel for the appellants and Sri Harish Pujari, learned A.G.A. for the State as well as Sri Promod Belwal, learned counsel for the complainant and perused the entire record of the trial court and the instant appeal.

9. To prove the case the prosecution has examined P.W.1 Hayat Singh, who has stated in his statement that the present incident was happened on 17.06.1983. When he had reached his home from flourmill, he came to know that the injury was caused to his brother Durga Singh. At that time, the time was about 9.30 P.M. and he came to know that his brother was lying in the house of Chandra Singh. He immediately reached there at 11.00 P.M. in the night. There he had seen Durga Singh in an injured condition then his brother told him about the incident. Next day morning, Durga Singh had been taken to the hospital in bullock cart. After that he has lodged the FIR i.e. Ex.Ka-1. The medical report was also submitted in the police station. This witness was cross-examined by the defence counsel at length but nothing has come out from his evidence, which will create any doubt. The evidence of this witness is reliable and believable.

10. P.W.2 Dr. H.C. Joshi has stated in his statement that on 18.06.1983 he was posted as Medical Officer in P.H.C., Khatima and on 18.06.1983 at 9:00 A.M. Durga Singh was brought by Hayat Singh. Durga Singh was medically examined by him in which injures were found in his body which are as under:-

(1) Incise wound 7 cm x 1.5 cm x (depth could not be measured due to danger of bleeding and further injury) on supra-

scapular region of left back, obliquely placed above downwards (upper and oleicraneon margins smooth and clear cut) tailing present clotted blood with fresh bleeding present.

(2) Incise wound 4 cm x 1.5 cm x depth u/0 on infra scapular region of right back, upper end is 2 cm away from mid-line oblique margin smooth and clean cut. Tailing present. Fresh blood comes out on touch. Blood-clots present.

11. P.W.2 Dr. H.C. Joshi has further stated that both the injuries found in the body of injured Durga Singh could be caused by the sharp edged weapon and injury might be caused on 17.06.1983 at 8:00 P.M. in the night. He has prepared the medical report i.e. Ex.Ka-2. He has further stated that on the basis of the report of Dr. P.D. Singh, he has prepared supplementary medical report i.e. Ex.Ka-3.

12. P.W.3 is Durga Singh, who is an injured witness has stated in his statement that the same incident was happened on 17.06.1983 when he was coming to his house after closing his flour mill. The time was about 8.00 P.M. when he was passing in front of the house of Sher Singh then he was caught hold by Sher Singh and Diwan Singh and Bhupendra Singh gave two knife blows in his back. After that Man Singh and Chandra Singh took him to their house. The accused-appellants had fled away from the spot. He has further stated that the fled away from the spot. He has further stated that the incident was seen by Chandra Singh, Man Singh and Jagat Singh and his brother Hayat Singh had reached there at 11.00 P.M. in the night and in the next morning at 4.00 A.M. he was taken to the hospital in bullock cart and he was remain admitted in the hospital for about 15 days. This witness was also cross-examined

by the counsel for the defence but nothing has come out from his statement which will create any doubt. The evidence of this witness is also reliable and believable.

13. P.W. 4 is Chandra Singh, who has stated in his statement that the same incident was happened on 17.06.1983 at about 8.00 P.M. and his brother Man Singh was also with him. They were sitting in the courtyard then they had seen that Durga Singh was caught hold by Sher Singh and Diwan Singh and Bhupendra Singh had caused injures with knife then he and his brother had taken Durga Singh in an injured condition to their house and Jagat Singh had also reached at the place of occurrence. In the night Hayat Singh also reached his house and in the next morning Hayat Singh taken the injured to the hospital. This witness was also cross-examined by the counsel for the defence but nothing has come out from his statement which will create any doubt. The evidence of this witness is also reliable and believable.

14. P.W.5 is Man Singh, who has not supported the prosecution case, hence he was declared hostile.

15. P.W.6 is Dr. P.D. Singh, who has medically examined Durga Singh and report has been prepared by him i.e. Ex.Ka-4.

16. P.W.7 is S.I. Mangla Nand Khanduri (Investigating Officer), who has stated in his statement that from 18.06.1983 to 01.02.1984 he was posted as Sub Inspector at Police Station Khatima. Investigation of the present case was entrusted to him. During the

course of investigation he had recorded the statement of witnesses and prepared the site plan that map is Ex.Ka-5 and after completing the investigation he has submitted the charge-sheet i.e. Ex.Ka-6. He has further submitted that chik FIR of the present case was written by Head Moharrir Jagat Singh and G.D. was also written by him. He has proved these exhibits as Ex.Ka-7 and Ex. Ka-8.

17. P.W. 8 is Jagat Singh, Head Constable, who has stated that chik FIR i.e. Ex.Ka-7 and G.d. i.e. Ex.Ka-8 were written by him and he has prepared the chik FIR on the basis of the report i.e. Ex.Ka-1.

18. After that the statement of the accused-appellants were recorded under Section 313 Cr.P.C. who denied the allegations made against them and in defence they have stated that they have falsely been implicated in this case due to enmity.

19. From the evidence discussed above, it is proved that on 17.06.1983 at 8:00 P.M. injured Durga Singh was caught hold by Sher Singh and Diwan Singh and two knife blows were given to the injured by Bhupendra Singh. On 18.06.1983 the injured was medically examined in P.H.C., Khatima at 9.00 A.M. and FIR was lodged by Hayat Singh on 18.06.1983 at 10.30 A.M. in Police Station Khatima. Thus, this fact is well established from the statement of Hayat Singh, Durga Singh and Chandra Singh and corroborated by the medical evidence i.e. injury report Ex.KA-2 and Ex.Ka-3 and the statements of Dr.H.C. Joshi and Dr. P.D. Singh.

20. As the facts and circumstances and the evidence narrated above on the basis of the statements of the witnesses as said above, the prosecution has proved its case against he appellants beyond reasonable doubts.

21. Sri S.K. Mandal, learned counsel for the appellants has fairly submitted that he does not want to challenge the part of conviction. He has submitted that on the basis of the evidence produced by the prosecution the only case under Section 324 IPC is made out against the appellants and not under Section 307 IPC. He has further submitted that there was no intention or motive to cause the injures to Durga Singh by the appellants, hence the case under Section 307 IPC, is not made out against the appellants. He has further submitted that for proving the case under Section 307 IPC, it must be proved that the appellants acted with such intention or knowledge, and under such circumstances that, if they by that act caused death, they would be guilty of murder. He has submitted that the injuries caused to the injured were not on vital part but were on the back of injured Durga Singh and even the injuries were only in the muscle deep. There is no injury on the vital organ and no vital organ was damaged. Learned counsel for the appellants has further submitted that as per the prosecution case, appellants have caused the injuries to Durga Singh on 17.06.1983 at 8.00 P.M. and the injured was taken to the hospital on 18.06.1983 at 9.00 A.M. but due to these injures no damage was caused to the body, hence it is proved that the injures were not on vital part and not dangerous to life. He has further submitted that the injured was examined after 13 hours of the injures

caused to him and there was no damage caused to him by way of these injuries, hence he has submitted that on the basis of the above said circumstances and the evidence, the only case under Section 324 IPC is made out against the appellants.

22. After considering the entire facts and circumstances of the case viz. The medical reports; statements of the Doctors; specially no motive or intention has been proved against the appellants; the injuries caused to the injured were not on vital part but were on the back and even the injuries were only in the muscle deep; no injury on the vital organ and no vital organ was damaged; injured was medically examined after 13 hours of the incidental examining the oral evidence of the Doctors, the case under Section 324 IPC is made out against the appellants.

23. Criminal Misc. Leave Application No. 1849 of 2006, Criminal Misc. Application No. 239 of 2007, Criminal Misc. Leave Application NO. 449 of 2007 and Criminal Misc. Leave Application No. 463 of 2007 have been filed Sri Promod Belwal, learned counsel for the complainant and Sri S.K. Mandal, learned counsel for the appellants seeking permission for compromise of the offence punishable under Section 324 IPC, which is a compoundable offence. Sri Harish Pujari, learned AGA has also accepted that the parties have entered into compromise with their own free wills without any undue influence or duress and has got no objection for the same.

24. Learned counsel for the appellants has further submitted that appellant no. 2-Diwan Singh is serving in the Indian Army and the appellants and the complainant are neighbourers and now they are living peacefully and there is no dispute in between.

25. Injured Durga Singh and appellants Diwan Singh and Bhupendra Singh were present in the Court on 16.08.2007. Sri S. K. Mandal, learned counsel for the appellants identified Diwan Singh and Bhupendra Singh and Sri Promod Belwal, learned counsel for the complainant identified Durga Singh.

26. In the above circumstances and in the interest of justice, it is expedient to grant the permission for compromise.

27. Permission for compromise is granted. The aforementioned applications are disposed of accordingly.

28. Injured Durga Singh and appellants Diwan Singh and Bhupendra Singh have filed a compromise, which is hereby accepted.

29. In the above said facts and circumstances and in the interest of justice, the conviction and sentence made against the appellants by learned II Additional Session Judge, Nainital in Session Trial No. 76 of 1984 are set aside and the appellants-Diwan Singh and Bhupendra Singh are acquitted as the matter, has been compounded with permission of this Court. Since appellant no. 1 Ser Singh has died, as per the report of

C.J.M. Udham Singh Nagar dated 10.11.2006 as such the appeal against Ser Singh is abated.

30. The appeal is disposed of accordingly.

(Dharam Veer, J.)

06.09.2007
RBS